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Monterey, California



THESIS

HOW IS THE FEDERAL ACQUISITION REGULATION
GOING TO AFFECT FUTURE ACQUISITION MANAGERS

by

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September 1980

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How is the Federal Acquisition Regulation
Going to Affect Future Acquisition Managers

by

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Submitted in partial fulfillment of the
requirements for the degree of

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from the
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ABSTRACT

The objectives of this research are: (1) to review the initial development and drafting process of the Federal Acquisition Regulation (FAR), (2) to determine the extent of progress that has been achieved thus far, (3) to identify some of the handicaps now being encountered in the drafting of the FAR, (4) to evaluate and compare the FAR coverage in light of what it will supersede and (5) to evaluate the impact of these elements on future acquisition managers.

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I. INTRODUCTION

A. OBJECTIVES OF RESEARCH

The objectives of this research were: (1) to review the initial development and drafting process of the Federal Acquisition Regulation (FAR), (2) to determine the extent of progress that has been achieved thus far, (3) to identify some of the handicaps now being encountered in the drafting of the FAR, and (4) to evaluate and compare some of the FAR coverage in light of what it will supersede.

B. RESEARCH QUESTIONS

In conducting this project the following questions were addressed:

1. How did the FAR come about?; how is it being drafted?; and how is it apt to affect future acquisition managers?
2. What are some of the handicaps encountered in the drafting of the FAR?
3. What will and will not be included in the FAR and what the agency implementing and supplementing regulations will be?
4. Is the FAR making acquisition policy?
5. How successful is the FAR in complying with the recommendations of the Commission on Government Procurement and will it halt the proliferation of agency acquisition regulations?

C. RESEARCH METHODOLOGY

The information presented in this paper was obtained from the currently available literature on the subject of the FAR. This literature base includes Office of Federal Procurement Policy (OFPP) and Office of the Secretary of Defense (OSD) directives, texts of Congressional hearings [19,20], one study performed by the Logistics Management Institute (LMI) [11] and reports of the General Accounting Office (GAO). Additional information was obtained through interviews with key personnel at OFPP, the Federal Acquisition Regulation Project Office (FARPO) and the General Services Administration (GSA). Further information, peripheral data and insight was gained by the writer through assignment to the FARPO for approximately one year.

D. SCOPE OF THE STUDY

The scope of this study is limited to the Federal sector with emphasis on DOD. All literature, statements, opinions and comments with very minor exception were either obtained from Federal agencies' documents or made by Federal employees'. Comments from the private sector were not included since phase two of the drafting process, where industry comments will be reviewed and considered for inclusion in the final FAR coverage, has not yet started. This area could possibly be considered in future follow-on studies.

E. ORGANIZATION OF THE STUDY

This thesis contains four chapters. Chapter One has stated the objectives of the thesis, presented research questions that were addressed and provided the methodology that was employed in performing the research. It further outlined the scope and described the organization of the thesis.

Chapter Two presents the background and development of the FAR. It defines what the FAR is and is not, what it will and will not contain and what it will replace. It traces the FAR's development from the Commission's on Government Procurement recommendations (COGP) to its present status, and reviews the significant problems encountered in the drafting process.

Chapter Three assesses the impact on acquisition policy that the FAR may project and presents some examples of FAR coverage for comparison with the current regulations, the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulation (FPR).

Chapter Four evaluates the probable success of the FAR and outlines the conclusions drawn from the material presented.

II. BACKGROUND

A. CREATION AND FUNCTIONS OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

The Commission on Government Procurement in its report to Congress of December 31, 1972 characterized the Federal procurement regulatory framework as a "burdensome mass and maze of procurement and procurement-related regulations, including numerous levels of supplementing and implementing regulations, too many primary sources of regulations and numerous collateral procurement-related regulations, issued independently of, but nevertheless affecting the procurement process and organization." Additionally, the report criticized the existing procurement system as having no effective overall procedures for coordinating, controlling and standardizing regulations.

✓ There appeared to be no one in charge of government wide management of procurement regulations. The Commission's recommendation (A-10) dealing specifically with this issue was to "establish a system of Government-wide coordinated, and to the extent feasible, uniform procurement regulations under the direction of the Office of Federal Procurement Policy (OFPP), which will have the overall responsibility for development, coordination and control of procurement regulations." [1:38]

✓ Congress responded to the commission's first (A-1) recommendations and passed Public Law 93-400, the OFPP Act, in

September 1974 which created OFPP and required it to establish a system of coordinated and, to the extent feasible, uniform procurement regulations for the executive agencies in accordance with applicable laws. Congress also amended Public Law 95-507, the Small Business Act and the Small Business Investment Act so that it authorized and directed the Administrator for Federal Procurement Policy "to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies." Further impetus to regulatory reform was added by the Federal Acquisition Act Bill (S-5) introduced in the 96th Congress by Senator Chiles [9]. If enacted, the Bill will provide authority and direction for the issuance of a single, simplified and uniform regulation [8]. Additionally, President Carter in his overall program for regulation reform has directed easing the burden of Federal regulations, simplifying them, writing in plain English, consolidating and reducing their number. The obvious intent is to reduce the paperwork burden and the associated costs. Similar recommendations have been expressed by the Federal Paperwork Commission and other Congressional interests.

1. OFPP Functions

Section 6(d) of P.L. 93-400 as amended in October of 1979 lists the functions of the Administrator of OFPP [17]. These are:

1. reviewing the recommendations of the Commission on Government Procurement to determine those recommendations that should be completed, amended or rejected, and to propose the priority and schedules for completing the remaining recommendations.

2. developing a system of simplified and uniform procurement policies, regulations, procedures, and forms;

3. establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

4. promoting and conducting research in procurement policies, regulations, procedures and forms, through the Federal Acquisition Institute which shall be located within the Office and directed by the Administrator;

5. establish through the Federal Procurement Data Center, which shall be located in the General Services Administration and acting as executive agent for the Administration, a computer based information system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch and the private sector;

6. recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development and performance evaluation of procurement personnel;

7. developing for the inclusion in the uniform procurement system to be submitted under section 8(a), standard contracts and contract language in order to reduce the Government's costs of procuring goods and services, as well as the private sector's cost of doing business with the Government; and

8. providing leadership and coordination in the formulation of executive branch positions on legislation relating to procurement. [16]

To comply with the above direction the OFPP undertook in January 1978 a most ambitious project of acquisition regulatory reform ever undertaken within the Federal Government [12]. This project supports President Carter's demands

for regulatory reform and the Office of Management and Budget's (OMB) emphasis on streamlining management, as related to Federal procurement.

The product of this effort will be a new Federal Acquisition Regulation System applicable to all Federal executive agencies. The foundation for this new system will be the Federal Acquisition Regulation (FAR), presently in the final drafting stages.

B. THE PURPOSE OF THE FEDERAL ACQUISITION REGULATION

The FAR will replace the Federal Procurement Regulations (FPR) and major portions of the Defense Acquisition Regulation [3] to become the sole regulation governing Federal acquisition. To the extent feasible the FAR will bring about uniformity in all regulatory coverage except that made inconsistent by the existing statutes. When published the FAR will be the single uniform regulation applicable to all executive agencies governing the acquisition of; (a) property (supplies) except real property, (b) services, (c) research and development, and (d) construction, alteration, repair, and maintenance of real property. The FAR will not regulate grants and cooperative agreements, or contracts using only nonappropriated funds. "The FAR provides coordination, simplicity and uniformity in the Federal acquisition process. It arrests and reduces the proliferation of acquisition regulations." [14,15]

The uniform regulation will specify for all executive agencies those policies, procedures, solicitation provisions, contract clauses, and contracting forms that can and should be the same for all agencies. Compared to the DAR and FPR the current primary acquisition regulations, the FAR will contain some policy changes and some new policies. Even though, making or changing acquisition policies is not the intent of the FAR, some changes will inevitably result as a by product. These changes result from: (a) resolving differences between current regulations, (b) implementing some COGP recommendations, and (c) simplifying and updating DAR and FPR coverage [14].

C. OFPP TASK GROUP ON ACQUISITION-FINDINGS ON THE FAR

A recent task group study reported the following about the FAR: [14:39]

Adoption of the FAR will eliminate the FPR, because the FAR will fulfill for all agencies the functions currently performed by the FPR for agencies other than DOD and NASA. It will also change the nature of the DAR and the NASA Procurement Regulations from free-standing, complete regulations to greatly reduced agency acquisition regulations implementing and supplementing the FAR. Other agency regulations that supplement the FPR will also be reduced, since the FAR will be more comprehensive than the current FPR.

A major source of increased uniformity is that the FAR will include many subjects now covered by the DAR, but not by the FPR. Examples include options, multi-year contracting, organizational conflicts of interest, value engineering, contractor purchasing systems reviews, expert and consultant services, duty and customs and production surveillance and reporting. In other cases, such as Government property and quality assurance, the FAR will provide more comprehensive coverage of subjects for which the FPR provides limited coverage. The FAR will also cover some subjects such as acquisition and distribution of commercial products and major system acquisitions, not previously covered, as such, in either the DAR or FPR.

For most subjects on which both the FAR and FPR already provide comprehensive coverage, the DAR and FPR are identical or very similar. There are some differences resulting from statutes. In some cases, such as the differences between negotiation authorities under 10 U.S.C. 2304 and under 41 U.S.C. 253, the FAR will cover both statutes and specify the differences. In others, such as cost accounting standards, the FAR will extend by policy to civil agencies, sometimes in modified form, statutory requirements that apply to Defense contracts. Similar policy extensions have been previously used in the FPR.

An area of considerable potential affect on contracting officers is presented by the following finding of the Task Group.

The FAR will cover delegation or withholding of contract administration functions and responsibilities. In areas that cut across contractor organizations and multiple contracts, the FAR will provide for the cognizant contract administration agency to act under a uniform rule structure for all agencies. Examples include settlement of indirect costs (overhead), contractor purchasing system reviews, and waiver of Government surveillance requirements.

The FAR will include fewer contract clauses than the DAR but more than the FPR. Some DAR clauses are peculiar to DOD. Others are being combined or made alternates to basic clauses.

✓ (The FAR will provide uniform solicitation provisions and contract clauses for common contract types and purposes. It will prescribe clearly defined alternates when necessary to accommodate varying situations. The FAR will prescribe a uniform method of incorporating solicitation provisions and contract clauses by reference that applies not only to those prescribed in the FAR, but also to any prescribed by agency level acquisition regulations. It will also prescribe a uniform contract format for use in most solicitations and contracts. In addition, selected DOD forms, such as those for documenting pre-award surveys, are being revised and converted to standard forms, and existing standard forms for solicitations and contracts are being reviewed and updated.

D. THE FEDERAL ACQUISITION REGULATION PROJECT OFFICE

The Federal Acquisition Regulation Project Office (FARPO) was created in January 1978 under the direction and guidance of OFPP [5]. Since the new Federal Acquisition Regulation covers both civilian and DOD procurements it was only natural that both sides have a part in this undertaking. The Office of Management and Budget tasked OSD and GSA to take leading roles in the preparation of the regulation. Because GSA already had a Federal procurement regulations staff, it was decided to merely add on the additional workload to the existing staff and hope for the best. On the DOD side there was no existing office that could easily absorb the new task, except perhaps the ASPR committee (now DAR), instead FARPO was established by OSD as a focal point for all action required to accomplish the task. OSD then directed each of the services and Defense Logistics Agency (DLA) to provide senior procurement personnel on a loan basis for a period from one to two years [4]. As a result the project office is staffed by procurement, legal and editorial experts from all services and DLA. Counting all personnel the office originally consisted of 40 personnel ranging in grade from GS-3 to GS-15 and from 0-3 to 0-6. Figure 2.1 is an organization chart that will aid in clarifying the organization structure and figure 2.2 the work flow.

Current as of June 1979

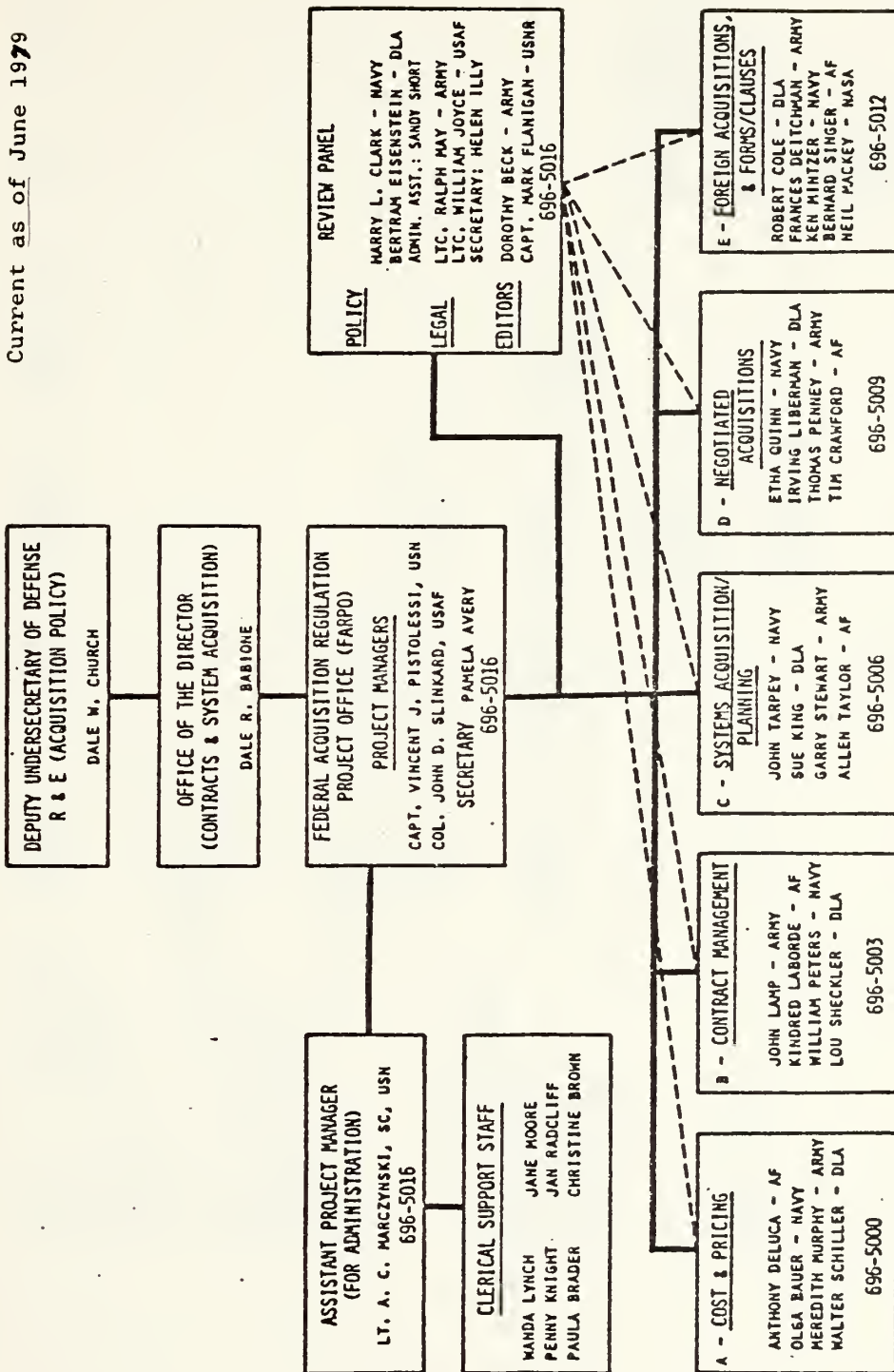


FIGURE 2-1

WORK FLOW CHART

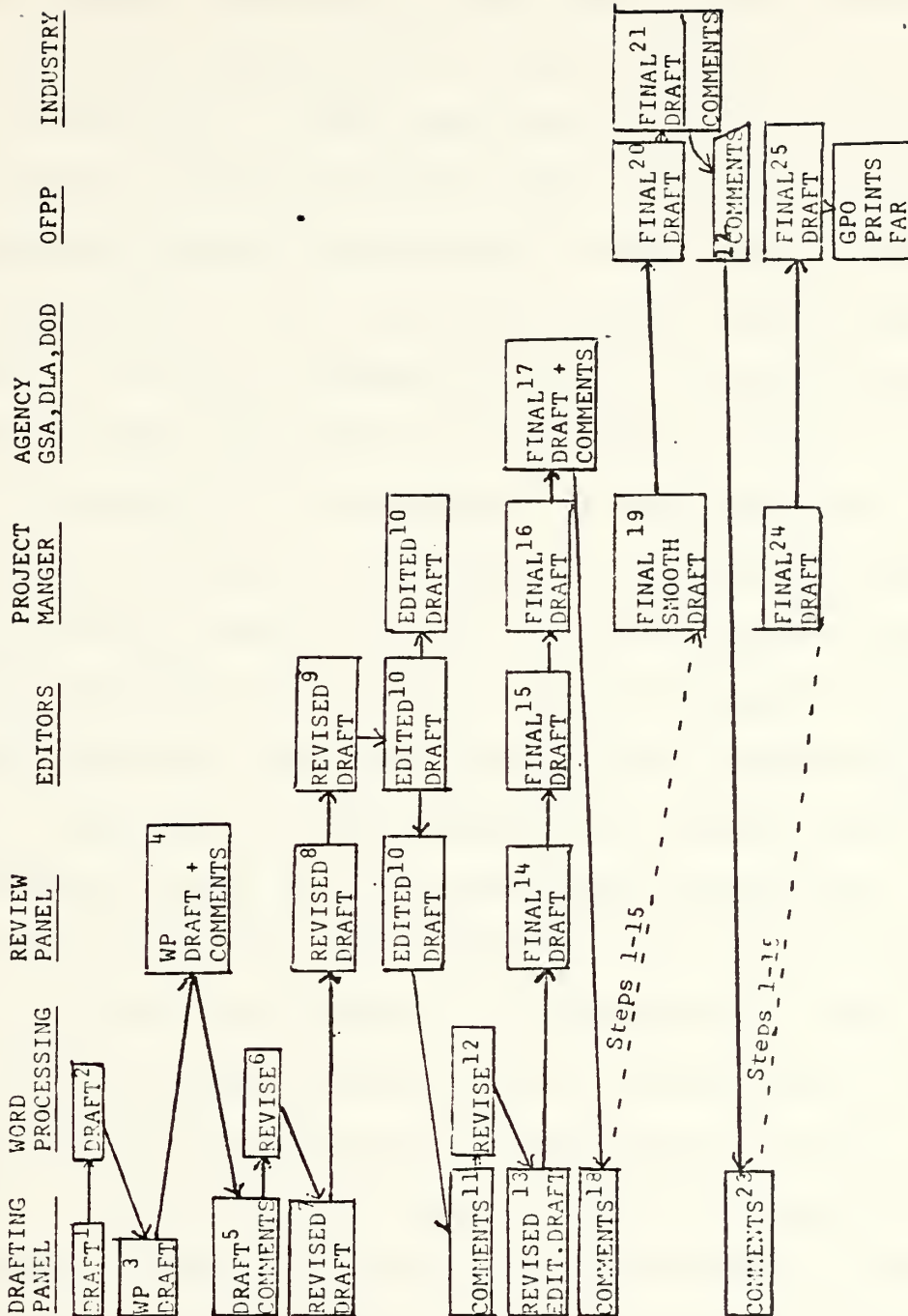


FIGURE 2.2

A general overview of the work flow is as follows; the five drafting panels write the DOD FAR material which is then reviewed by a panel consisting of high level policy members, legal and editorial specialists to insure technical, legal and editorial adequacy [6]. After each DOD section of the regulation is drafted, reviewed internally and coordinated with GSA, the proposed FAR material is submitted to OFPP, which after further review sends it out for public comment and official agency input. As can be imagined, this is a sizable undertaking and has taken more time than initially predicted [7].

From the inception of the project, it was envisioned that a sizable clerical support staff would be required to keep up with the voluminous amounts of draft material needing typing and retyping throughout the various review and comment phases of a draft. Initially each drafting panel was assigned a secretary to take care of their respective clerical needs. This arrangement worked until the workload of each panel exceeded the capabilities of the typist. Prior to reaching this point an effort was started to investigate the availability of word processing systems that could be used by the office and that would require the minimum time to install and operate [21]. Several systems were available and appeared to offer promises of faster processing and the ability to deal with vast amounts of input data. However, before a decision was reached on this task, it was learned that OFPP, had a small contract for word processing and preferred that the FAR

project offices add their requirements to its contract. Thus it was most expedient to add other customers to the current contract and lease the additional required equipment. By looking at the work flow chart, figure 2.2, and figure 2.1, the organization chart, it is not self evident that the word processing staff was a vital link in the workflow of the project office. Normally the bulk of the work was generated by the five drafting panels who submitted in hand written roughs to the word processing center for initial input. Special input forms were used to insure proper storage and later retrieval of material. After input a copy would be printed and returned to the drafting panel which would review and revise it until a satisfactory draft was ready for the review panel. The review panel would revise and, in some cases, rewrite the original version and have it stored in the system. After several reiterations of this process through the editors and finally the project managers a final official version of the draft would emerge.

As can be expected each time the document came to word processing for revision, it was on an urgent job order with required due time/date that probably had passed or couldn't be attained. This was especially true the closer the specific project was to getting reviewed by the project managers.

Because of the size, complexity and urgency of the project the computer based word processing system was used by DOD, GSA and OFPP. Once the initial operator and equipment problems

were resolved the system proved to be a valuable asset to the efficient operation of the project offices. The word processing system facilitates draft revisions, search, storage for historical purposes, variable formatting and composition for final printing by the Government Printing Office (GPO). [23]

E. THE FEDERAL ACQUISITION REGULATION SYSTEM

The Federal Acquisition Regulation will be the first single uniform acquisition regulation to be developed and used by the Federal Government. It applies to all Federal acquisitions of property and services with appropriated funds.

The FAR is designed to bring greater coordination, simplicity and uniformity into the Federal acquisition process and to reduce proliferation of diverse and inconsistent acquisition regulations. It is expected that through its use millions of dollars will be saved and doing business with the Government will be easier. The FAR will be published as Chapter 1 of Title 48 of the Code of Federal Regulations. The remaining chapter of Title 48 will be assigned to agency implementing and supplementing regulations.

Provisions in the FAR (Subpart 1.3) have been established to both control the issuance of agency regulations and limit their number. Specific guidelines are provided as to the type of regulations that agencies cannot issue. However, one weakness in this area that was pointed out in the latest GAO report on the recommendations of the Commission on Government

Procurement is that the FAR does not clearly state the kinds of regulations that may be issued. Thus there remains some doubt as to the effectiveness in controlling future regulation proliferation. [2:10]

An OFPP survey and study of Executive Agency procurement regulations further verified the commission's conclusions as well as further quantified the extent of the procurement regulation proliferation problem. [13] This study located 877 different sets of procurement related regulations totaling 64,570 pages currently being used by executive agencies, departments and bureaus. The OFPP survey reflected a total absence of regulatory management of lower level procurement regulations throughout the Executive Branch. The intent of the FAR system is to consolidate, rewrite and substantially reduce or replace these lower level regulations. The system will allow a limited number of regulations issued by the agencies to implement the FAR where implementation is essential to agency operations. There is a general prohibition throughout the regulation system against changing, restatement or paraphrasing of higher level regulatory coverage. Additionally, all lower level regulations within the FAR system will be reviewed and approved at a higher level and published in Code of Federal Regulations. They will parallel the FAR in format and numbering system and will be subject to the same public participation rules as the FAR itself.

The OFPP Survey and Study proposed seven recommendations to provide an effective mechanism to control and limit acquisition regulation proliferation. These recommendations provided the foundation for Part 1 of the FAR-Federal Acquisition Regulation System.

According to the study an effective control mechanism should include the following elements: [13]

1. A single government wide system of acquisition regulations encompassing all policies and procedures necessary for Federal officials to perform their acquisition functions, without reference to any other regulatory documents outside of the system;
2. A single format, arrangement and numbering system for all acquisition regulations with implementing and supplementing regulations numbered to correspond with the coverage being implemented and supplemented;
3. A general prohibition throughout the regulation system against changing, restatement or paraphrasing of higher level regulatory covering;
4. An ongoing system of active oversight over implementing and supplementing regulations including specific higher level authorization for the issuance of such regulations and higher level review and approval of proposed regulations prior to issuance;
5. Publication of all acquisition regulations in the Code of Federal Regulations under a single Title, to facilitate oversight and public accessibility;
6. Implementation within the acquisition regulations of those particular socio-economic and other collateral requirements which have the effect of regulating the acquisition process; and
7. Consolidation and standardization of common regulatory coverage at the highest practicable level within the regulation system.

Compliance with the FAR and conversion of the FAR system will entail an extensive amount of work and will take a long

time. Major executive departments and agencies will have to start from the outset in determining unique regulatory requirements, authorizing the issuance of essential implementing regulations, developing those regulations within the FAR structure and issuing them through the Federal Register. The final product should be a coordinated and rational government-wide system of acquisition regulations in keeping with the Commission on Government Procurement recommendations.

F. PROBLEMS IN DRAFTING THE FAR

One of the difficulties in producing a single uniform regulation is that two statutes have to be accommodated. Acquisitions for DOD and NASA are carried out under the Armed Services Procurement Act 10 U.S.C. 2304(a) while the civilian agencies are governed by the Federal Property and Administrative Service Act, 41 U.S.C. 252(c). The Chiles Bill (S-5) which is still pending in Congress would establish a single statute for all of the Federal Government. Until the bill is passed those provisions not constrained by current law in S-5 are being incorporated in the FAR [24,25].

The COGP in its report noted that it had found more than 30 troublesome inconsistencies between the two Acts and cited that fact among the reasons supporting enactment of a new consolidated acquisition statute such as S-5 [1]. Many of the statutory differences have been resolved in the DAR and FPR through adoption of common regulatory policy. For example,

the FPR adopted requirements governing Truth in Negotiations (PL 87-653), the requirements for Cost and Pricing Data, even though that Act applies only to defense agencies.

Different statutory requirements add to the problems of drafting the FAR and have to be recognized. A good example of this is found in the authority to negotiate contracts. Agencies operating under 10 U.S.C. have authority to negotiate in the interest of national defense or industrial mobilization, or for technical or specialized supplies requiring substantial initial investment or an extended period of preparation for manufacture. Agencies under 41 U.S.C. do not have this authority. In addition the COGP pointed out in its report that there were several differences between 10 U.S.C. and 41 U.S.C. involving circumstances under which determinations and findings were required when formal advertising was not used. These differences have since been resolved through adoption of common regulatory policy and reflect this in the FAR. It is realized that when S-5 or a similar bill passes portions of the FAR already drafted will have to be revised to conform to the new statute [22].

Extensive research was done to evaluate the possibility of adopting commercial practices in the FAR. The services of Professor John Whelan of the Hastings College of Law were used to assist in analyzing the feasibility of adopting portions of the Uniform Commercial Code (UCC). It is clear that the UCC cannot be incorporated into the FAR in any wholesale

fashion; application will have to be made on a selective basis. Much of the UCC is not directly applicable to Government contracting, however, some possibilities have been identified. For example, possible changes to clauses covering inspection and acceptance and warranties. These changes would have significant effects including assigning more risk to the contractor than under existing clauses [18]. The potential result of such changes requires careful evaluation and an impact study before they are introduced in the FAR.

The drafters of the FAR are using zero base analysis and writing which has contributed to the slow progress the FAR has achieved thus far [6]. This zero basing concept will result in a regulation that is simple, clear and understandable.

Basic questions asked for this task include:

Is the material necessary? Is it stated clearly? Is it required by law? Can it be stated in fewer words? Is it organized properly? If a complete rewrite is constrained by statute or otherwise an attempt is made to improve the coverage by better organization and clearer writing. Whether the material is completely rewritten or improved by better organization and editing, it is further analyzed to see if it can be combined or relocated in a way that will be more helpful to the user of the FAR. [18]

III. SELECTED COMPARISONS AND EXAMPLES OF FAR COVERAGE

A. COMPARISON OF FAR COVERAGE TO THE DAR AND FPR

This section looks at two subparts of the FAR, 15.4 - Solicitation and Receipt of Proposals and Quotations and 3.4 Contingent Fees. Each of these subparts has been chosen as representative of the extensive rewriting, zero basing and organizing of material that is involved in the drafting of the FAR. The final product being much easier to understand and follow. Improvements in brevity, organization and clarity are achieved through the rigorous process of reviewing and revising. Improvements in currency and internal consistency as well as citations to external documents are also made.

In writing the FAR, the project offices rigorously examine, compare, and account for all coverage contained in the DAR and FPR, preserve the historical basis for the FAR represented by the DAR and FPR and document the source and rationale for any changes. Other agency regulations, such as the NASA PR and DOE PR, statutes, executive orders, Comptroller General decisions and policy letters are fully considered to insure compatibility. [14]

1. FAR 15.4 - Solicitation and Receipt of Proposals and Quotations

By reviewing the proposed FAR 15.4 table of contents, it becomes evident that a new uniform contract format is being presented (Exhibit 3-1). Standard Form 33 Table of Contents has been revised to correspond to the new format (Exhibit 3-2).

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>Part 5--Solicitations of Proposals and Quotations</p> <p>3-500 Scope of Part</p> <p>3-501 Preparation of Request for Proposals or Request for Quotations</p> <p>3-502 Solicitation for Informational or Planning Purposes</p> <p>3-503 Bidders Mailing Lists</p> <p>3-504 Pre-proposal Conferences</p> <p>3-504.1 General</p> <p>3-504.2 Procedure</p>		<p>Subpart 1-3.5--(Reserved)</p>		<p>SUBPART 15.4--SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS</p>
<p>3-505 Amendment of Request for Proposals and Request for Quotations--Prior to Closing Date</p> <p>3-506 Late Proposals and Modifications of Proposals</p> <p>3-507 Treatment of Procurement Information</p> <p>3-507.1 Restrictions on Disclosure and Use of Data in Proposals and Quotations</p> <p>3-507.2 Disclosure of Information During the Pre Award or Pre Acceptance Period</p>				<p>15.400 Scope of subpart.</p> <p>15.401 Applicability.</p> <p>15.402 General.</p> <p>15.403 Solicitation mailing lists.</p> <p>15.404 Solicitations for information and conferences.</p> <p>15.405 Preparing requests for proposals and requests for quotations.</p> <p>15.406 Uniform contract format.</p> <p>15.406-1 Part I--The Schedule.</p> <p>15.406-2 Part II--Contract clauses.</p> <p>15.406-3 Part III--Documents, exhibits, and other attachments.</p> <p>15.406-4 Part IV--Representations and instructions.</p> <p>15.406-5 Solicitation provisions.</p> <p>15.407 Issuing solicitations.</p> <p>15.408 Pre-proposal conferences.</p> <p>15.409 Amendment of solicitations prior to closing date.</p> <p>15.410 Receipt of proposals and quotations.</p> <p>15.411 Late proposals, quotations, and modifications.</p> <p>15.412 Disclosure and use of information before award.</p> <p>15.413</p>
<p>3-508 Information to Offerors</p> <p>3-508.1 General</p> <p>3-508.2 Pre-Award Notice of Unacceptable Offers</p> <p>3-508.3 Post-Award Notice to Offerors</p> <p>3-508.4 Debriefing of Unsuccessful Offerors</p> <p>3-508.5 Classified Information</p> <p>3-509 Protections Against Award</p> <p>3-510 Disclosure of Mistakes After Award</p>	<p>(1.) MR Sub- part 15.9</p>			
		<p>MR 15.408 (b)</p>		
	<p>MR Sub- part 15.9</p>			
<p>COMMENTARY:</p> <p>1. This subpart provides policies and procedures (a) for preparing and issuing requests for proposals and quotations and any amendments thereto and (b) for receiving and handling proposals and quotations. Evaluation of proposals and quotations and subsequent actions will be covered elsewhere in Part 15.</p>				<p>1</p>

FEDERAL ACQUISITION REGULATION (FAR)

BA
(1)
(2)

SOLICITATION, OFFER AND AWARD

3 CERTIFICATION NATIONAL DEFENSE UNDER 605A REG 2 AND 605D REG 1

PAGE 1 OF 1

1 CONTRACT NO	2 SOLICITATION NO <input type="checkbox"/> ADVERTISED IFBI <input type="checkbox"/> NEGOTIATED IFPM	3 DATE ISSUED	4 REQUISITION/PURCHASE REQUEST NO
7 ISSUED BY CODE		8 ADDRESS OFFER TO (If other than block 7)	

In advertised solicitations "offer" and "offeror" shall be construed to mean bid and bidder
SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in block 8, or if handwritten, in the depository located in _____ until _____ local time _____.

If this is an advertised solicitation, offers will be publicly opened at that time.

CAUTION - LATE OFFERS: See Section L, Provision No. 52.214-XX or 52.215-9.
All offers are subject to all terms and conditions contained in this solicitation.

FOR INFORMATION CALL (Name & telephone no.) (No collect calls) ▶

10.		TABLE OF CONTENTS					
IXI	SEC	PAGE(S)		IXI	SEC	PAGE(S)	
PART I- THE SCHEDULE				PART II- CONTRACT CLAUSES			
A	Solicitation/Contract Form			I	Contract Clauses		
B	Supplies or Services and Prices			PART III- LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS			
C	Description/Specification			J	List of Documents, Exhibits, and other Attachments		
D	Packaging and Marking			PART IV- REPRESENTATIONS AND INSTRUCTIONS			
E	Inspection and Acceptance			K	Representations, Certifications and other Statements of Offerors or Quoters		
F	Deliveries or Performance			L	Instructions, Conditions, and Notices to Offerors or Quoters		
G	Contract Administration Data			M	Evolution Factors for Award		
H	Special Contract Requirements						

OFFER (must be fully completed by offeror)

11. In compliance with the solicitation, the offeror agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified in the solicitation, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

12. DISCOUNT FOR PROMPT PAYMENT (See Section K, Provision No. 52.XXX)

_____ % 10 CALENDAR DAYS _____ % 20 CALENDAR DAYS _____ % 30 CALENDAR DAYS _____ CALENDAR DAYS

13. OFFEROR	CODE	FACILITY CODE	14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
NAME AND ADDRESS (Street, city, county, State and ZIP code)			15. SIGNATURE
AREA CODE AND TELEPHONE NO ▶			16. OFFER DATE
<input type="checkbox"/> Check if remittance address is different from above - enter such address on Schedule			

AWARD (To be completed by Government)

17. ACCEPTED AS TO ITEMS NUMBERED	18. AMOUNT	19. ACCOUNTING AND APPROPRIATION DATA
20. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK _____	21. NEGOTIATED PURSUANT TO	19 USC 2204 (1) 1 41 USC 251(c) 1
22. ADMINISTERED BY (If other than block 7)	CODE	23. PAYMENT WILL BE MADE BY CODE
24. NAME OF CONTRACTING OFFICER (Type or print)	25. UNITED STATES OF AMERICA BY (Signature of contracting officer)	26. AWARD DATE

Award will be made on this form, or on Standard Form 26, or by other official written notice

33-130

Standard Form 33 (Edition)
Prescribed by GEPF, FAR (48 CFR 53.100)

EXHIBIT 3-2

The description of a uniform contract format in FAR 15.406-1 as well as the general instructions for the content of each part and section of the new format will provide increased Government-wide standardization in solicitations and contracts. Part IV of the uniform contract format groups solicitation representations and instructions and provides for removal of this part at the time of contract award and incorporating by reference its salient features in the distributed copies of the contract, thus saving both reproduction and mailing costs. (Exhibit 3.3)

To add further uniformity and clarity to the procurement process FAR 15.407 does not provide for an alternate procedure for consideration of late proposals as allowed in FPR 1-3.802-2. FAR coverage provides only for the basic provision currently in both the DAR and FPR regarding late proposals. OFPP's rationale for this treatment is twofold, first by stipulating one treatment of late proposals it will insure consistent Government wide application. In addition, by eliminating the alternative method of considering late proposals the risks of protests or unfair treatment is substantially reduced.

Another significant proposed change in the FAR coverage is in dealing with Standard Form (SF) 33 and 33A. The FAR coverage will eliminate solicitation provisions from SF 33 and eliminate SF 33A completely. This is in keeping with the general attempt to eliminate provisions and clauses from

<p>1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)</p> <p>3-501 (continued)</p> <p>(b) Contract Forms and Uniform Contract Format.</p> <p>(1) This paragraph (b) applies to all negotiated acquisitions except:</p> <ul style="list-style-type: none"> a. small purchases and other simplified purchase agreements, b. basic agreements, c. pre invitation notices, d. the first step of two-step formal advertising, e. construction and architect-engineer contracts, f. ship construction including shipbuilding, conversion and repair, g. acquisitions for which special contract forms inconsistent herewith are prescribed by Part 5 of Section XVI, and h. acquisitions of subsistence. <p>Those acquisitions enumerated f through h need not be in the Uniform Contract Format, but must contain all applicable items. The applicability of this paragraph to acquisitions outside the United States, its possessions and Puerto Rico is optional.</p> <p>(2) Requests for proposals shall be prepared on Standard Form 33, Solicitation, Offer and Award (see 16-102.3), or on forms prescribed by Departmental regulations; requests for quotations shall be prepared on Standard Form 18, Request for Quotations (see 16-102.1) or on forms prescribed by Departmental regulations.</p> <p>(3) The following subparagraphs are grouped so as to conform to the Uniform Contract Format (including the Table of Contents) set out below. All items of information shall be set forth in the appropriate Section. Arrangement in this Uniform Contract Format for fixed price supply and service contracts does not preclude use of the following paragraph concerning preparing requests for proposals or requests for quotations for other types of contracts:</p>	<p>2. Code</p> <p>NIFE</p> <p>(1.)</p> <p>MR 15-406-2(a)</p> <p>D</p>	<p>3. FEDERAL PROCUREMENT REGULATIONS (FPR)</p> <p>(See 1-1.314, page 2)</p> <p>EXTRACT FROM 1-16.201-1 Form prescribed.</p> <p>Request for Quotations (Standard Form 18) shall be used for acquisitions of supplies, materials, and services to be delivered or performed within the United States, its possessions, and related information from suppliers in accordance with this section. For acquisitions outside the United States, its possessions, and Puerto Rico, the form 3 Standard Form 36, Continuation Sheet, may be used with the Request for Quotations form when additional spaces are needed.</p> <p>EXTRACT FROM 1-3.802(c)</p> <p>The request for proposals shall be as complete as possible with respect to: item description or statement of work; specifications; Government-furnished property; special provisions; cost or pricing data requirements (see 1-3.802.3); and contract clauses (Requests for proposals shall be prepared and time for submission of proposals).</p>	<p>4. Code</p> <p>R</p> <p>(2.)</p>	<p>5. FEDERAL ACQUISITION REGULATION (FAR)</p> <p>15.405 Solicitations for information or planning purposes.</p> <p>When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, the contracting officer may determine in writing that a solicitation for information or planning purposes is justified. Each such solicitation shall include on its face the provision at 57.215-3. Solicitation for information or planning purposes. The cost of responding to a solicitation for information or planning purposes may be allowable under 31.205-4.</p> <p>15.406 Preparing requests for proposals and requests for quotations.</p> <p>15.406-1 Uniform contract format.</p> <p>(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-2 to the maximum practicable extent. The format facilitates preparation of the solicitation and contract, as well as reference to and use of those documents by offerors and contractors. The uniform contract format is optional for acquisitions outside the United States, its possessions, territories, and Puerto Rico. It does not apply to the following:</p> <ul style="list-style-type: none"> (1) Basic agreements (see 16.802). (2) Construction and architect-engineer contracts (see Part 36). (3) Shipbuilding (including design, construction and conversion), ship overhauls, and ship repairs. (4) Subsistence. (5) Contracts requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format. (b) Solicitations to which the uniform contract format applies shall include Parts I, II, III, and IV. Upon award, the resulting contract, but shall retain in their contract file Section K, Representations, certifications, and other statements of offerors or quoters, as completed by the contractor. Award by acceptance of a proposal on the award portion SF 33 or SF 26 incorporates Section K in the resultant contract. Contracts resulting from RFQ's or otherwise requiring a bilateral document shall incorporate Section K by reference in the signed contract.
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COMMENTARY:

1. Applicability of UCF to notices excluded from 15.406-1(a) by definition.
2. DAR 1-309 requires approval at a level higher than the contracting officer, but FPR 1-1.314 does not. Consistent with the goal of enhancing contracting officer authority, the FAR coverage focuses on the need for adequate justification, rather than control by higher-level approval.

3. This procedure, already used by many contracting offices, avoids substantial reproduction and mailing costs by reducing the size of distributed copies of the contract. However, it is not specifically addressed in the current DAR or FPR.

6

EXHIBIT 3-3

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)		2. Code		3. FEDERAL PROCUREMENT REGULATIONS (FPR)		4. Code		5. FEDERAL ACQUISITION REGULATION (FAR)																																													
TABLE OF CONTENTS		NFE				(1)		TABLE 15-2 Uniform Contract Format																																													
<p>THE FOLLOWING CHECKED SECTIONS ARE CONTAINED IN THE CONTRACT</p> <table border="1"> <thead> <tr> <th>(X) SEC</th> <th>PAGE</th> <th>(1) SEC</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td colspan="4">PART I--THE SCHEDULE</td> </tr> <tr> <td>A</td> <td>Contract Form</td> <td colspan="2">PART III--LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS</td> </tr> <tr> <td>B</td> <td>Supplies/Services and Prices</td> <td>J</td> <td>List of Documents, Exhibits, and other attachments</td> </tr> <tr> <td>C</td> <td>Description/Specifications and Marking</td> <td>K</td> <td>Representations, Certifications, and other statements of offerors or quoters</td> </tr> <tr> <td>D</td> <td>Packaging and Marking</td> <td>L</td> <td>Instructions, conditions, and notices to offerors or quoters</td> </tr> <tr> <td>E</td> <td>Inspection and Acceptance</td> <td>M</td> <td>Evaluation factors for award</td> </tr> <tr> <td>F</td> <td>Deliveries or Performance</td> <td></td> <td></td> </tr> <tr> <td>G</td> <td>Contract Administration</td> <td></td> <td></td> </tr> <tr> <td>H</td> <td>Special Provisions</td> <td></td> <td></td> </tr> <tr> <td>I</td> <td>General Provisions</td> <td></td> <td></td> </tr> </tbody> </table>		(X) SEC	PAGE	(1) SEC	PAGE	PART I--THE SCHEDULE				A	Contract Form	PART III--LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS		B	Supplies/Services and Prices	J	List of Documents, Exhibits, and other attachments	C	Description/Specifications and Marking	K	Representations, Certifications, and other statements of offerors or quoters	D	Packaging and Marking	L	Instructions, conditions, and notices to offerors or quoters	E	Inspection and Acceptance	M	Evaluation factors for award	F	Deliveries or Performance			G	Contract Administration			H	Special Provisions			I	General Provisions			NFE						<p>Part I--The Schedule</p> <p>A Solicitation/contract form</p> <p>B Supplies or services and prices</p> <p>C Description/specifications</p> <p>D Packaging and marking</p> <p>E Inspection and acceptance</p> <p>F Deliveries or performance</p> <p>G Contract administration data</p> <p>H Special contract requirements</p> <p>Part II--Contract Clauses</p> <p>I Contract clauses</p> <p>Part III--List of Documents, Exhibits, and Other Attachments</p> <p>J List of documents, exhibits, and other attachments</p> <p>Part IV--Representations and Instructions</p> <p>K Representations, certifications, and other statements of offerors or quoters</p> <p>L Instructions, conditions, and notices to offerors or quoters</p> <p>M Evaluation factors for award</p>	
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<p>COMMENTARY:</p> <p>1. Table 15.2 is based on the DAR table of contents for the uniform contract format (UCF) approved for DOD's use on the SF31. Part IV of the UCF is located as the final part to reduce paperwork in the preparation of a resulting contract through incorporating Part IV into the contract by reference.</p>																																																					

EXHIBIT 3-3 (continued)

standard forms except those for small business. The rationale as stated in FAR 15.4 commentary is: [10]

The practice of printing provisions and clauses on standard forms has resulted in the obsolescence of portions of the forms and the need for corrective alterations and additions in solicitations and contracts for long periods while the forms were revised, printed and distributed. In some cases solicitation provisions and contract clauses printed on the forms are not prescribed and set forth elsewhere in the DAR and FPR or are prescribed in the regulation in a longer version than the condensed version printed on the form. The FAR will enhance incorporation of solicitation provisions and contract clauses by reference. Its uniform contract format will tend to standardize the general location of material in solicitations and contracts. In addition, advances in reproduction and computer technology are increasing the availability, and lowering the costs of alternative means of preparing solicitations and contracts. Since most acquisitions, other than small purchases, require at least some provisions or clauses in addition to those now preprinted on standard forms, we consider that those provisions and clauses that need to be printed in full text can be more efficiently printed, along with those peculiar to the acquisition or organization involved, by automated means or by reproduction at the contracting office or other appropriate level within the agencies.

2. FAR 3.4 Contingent Fees

Subpart 3.4 of the FAR deals with contingent fees.

It prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those authorized by 10 U.S.C. 2306(b) and 41 U.S.C. 254(a). These laws further provide that in case of breach or violation of the warranty by the contractor the Government may annul the contract without liability or deduct from the contract price the full amount of the contingent fee. This subpart has had a major rewrite and its final product

represents a successful effort in achieving better organization of material, clearer and more understandable coverage, as well as concise guidance for the contracting officer in how to evaluate and review contingent fee representations and arguments submitted by the contractors (Exhibit 3-4). [10]

✓ B. COVERAGE ADDED BY THE FAR ✓

1. Coverage not in the DAR or FPR

The primary examples of totally new coverage that is not in either the DAR or the FPR is the inclusion of coverage on Major System Acquisitions (FAR 34) and the Acquisition and Distribution of Commercial Products (ADCOP) (FAR 11). Since the coverage on major systems acquisition has not yet been published, only the coverage on ADCOP is presented as an example of new material.

The OFPP first issued the policy on the ADCOP in May of 1976. This resulted from one of the recommendations of the Commission on Government Procurement (D-6) which stated that OFPP should be assigned responsibility "for policies to achieve greater economy in the procurement, storage and distribution of commercial products used by the Federal agencies."

This part sets forth policies and procedures to allow agencies to take advantage of the efficiencies of the commercial market place and to prevent the development of duplicative and overlapping Government systems for the procurement and supply of common commercial products. Specific objectives of this part are to: [10]

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-506.2 Failure or Refusal to Furnish Standard Form 119 If the successful bidder or offeror to the contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof, as provided in 1-506.1 the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:</p> <p>(1) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected,</p> <p>(2) if the contract has been awarded or bid or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor</p>	<p>AN</p>	<p>§ 1-506.2 Failure or refusal to furnish Standard Form 119. If the successful bidder or contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof, as provided in 1-506.1 the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:</p> <p>(1) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected,</p> <p>(2) if the contract has been awarded or bid or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with established procedure</p>	<p>1-506.2 (a) <i>pg 28</i></p>	<p>3.406 Award before receipt of SF 119.</p> <p>Contracting Officers may award formally advertised contracts before receipt of SF 119 or the statement. Negotiated contracts may not be awarded before receipt and evaluation of the SF 119 or statement, unless specifically approved by the chief of the contracting office.</p> <p>3.407 Failure or refusal to furnish SF 119.</p> <p>If the prospective contractor fails or refuses to furnish SF 119 or the statement in response to the contracting officer's request, the chief of the contracting office shall determine whether to make further efforts to secure the SF 119 or statement or to initiate appropriate actions under 3.409.</p> <p>3.408 Evaluation of SF 119.</p> <p>3.408-1 Responsibilities.</p> <p>(a) The contracting officer shall evaluate the SF 119 and all related information to determine--</p> <p>(1) Whether a contingent fee arrangement exists between the prospective contractor and a person or company other than a full-time bona fide employee working solely for the prospective contractor; and</p> <p>(2) When such a contingent fee arrangement does exist, whether it meets the statutory exception permitting contingent fee arrangements with bona fide employees or agencies.</p> <p>(b) The contracting officer's evaluation, conclusion, and any proposed actions shall be reviewed at a level above the contracting officer.</p> <p>3.408-2 Evaluation criteria.</p> <p>(a) Improper influence. By definition (see 3.401), a bona fide employee of bona fide agency neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts. If the contracting officer decides that there is a reasonable basis to conclude that improper influence has been or will be exerted or proposed, the employee or agency will not be considered bona fide.</p> <p>(b) Bona fide employee. An employee may be bona fide, but not work on a full-time basis solely for the contractor; e.g., small business concerns may need to employ persons who also represent other concerns. Prospective contractors must disclose such arrangements in the Representation and Agreement and submit SF 119 or the statement. However, contingent compensation arrangements with bona fide employees, customary in the trade, are within the statutory exception and are not prohibited. In determining whether an employee is bona fide, the contracting officer shall--</p>
<p>(DAR 1-506.3 (c), <i>pg 22 and 1-506.4 (e), <i>pg 24</i></i>)</p> <p>(DAR 1-506.3, <i>pg 22</i>)</p>		<p>(FPR 1-1.504-4 (c), <i>pg 22 and 1-1.504-5 (a), <i>pg 23</i></i>)</p> <p>(FPR 1-1.504-4, <i>pg 22</i>)</p>	<p>1-1</p>	<p>3.409</p>

COMMENTARY:

5. FAR 3.408-1(a) has been added to state clearly the contracting officer's responsibilities for evaluating SF 119 and determining whether a contingent fee arrangement meets the statutory exceptions. Review above the contracting officer is required by 3.408-1(b) because difficult judgments may be required and the contracting officer may be the person at whom any attempts at improper influences are directed

EXHIBIT 3-4

1. DEFENSE ACQUISITION REGULATION (DAR/ASTRI)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
(DAR 1-505.3, pg 22)		(FPR 1-1.504-4, pg 22)	MR	<p>(1) Compare the employment arrangement to the definition of bona fide employee in 3.401;</p> <p>(2) Consider the criteria in subparagraphs (c)(1), (2), and (5) below, as appropriate; and</p> <p>(3) Consider the continuity of employment. The employment must contemplate some continuity and not be solely for obtaining one or more Government contracts.</p> <p>(c) Bona fide agency. In determining whether an agency is bona fide, the contracting officer shall compare the arrangement, in its totality, to the definition of bona fide agency in 3.401. In interpreting the words "established commercial or selling agency maintained by a contractor for the purpose of securing business," the contracting officer shall consider the following factors, but must recognize that no single factor or combination dictates a particular overall conclusion:</p> <p>(1) The fee should not be inequitable or exorbitant when compared to the services performed or to customary fees for similar services related to commercial business.</p> <p>(2) The selling agency should have adequate knowledge of the contractor's products and business, as well as other qualifications necessary to sell the products or services on their merits.</p> <p>(3) The contractor and the agency should have a continuing relationship or, in newly established relationships, should contemplate future continuity.</p> <p>(4) The agency should be an established concern that has existed for a considerable period, or be a newly established going concern likely to continue in the future.</p> <p>(5) While an agency that confines its selling activities to Government contracts is not disqualified, the fact that an agency represents the contractor in both Government and commercial sales should receive favorable consideration.</p>
(DAR 1-505.4, pg 23 and 24)		(FPR 1-1.504-5, pg 23 and 24)	MR	

COMMENTARY:

1. reduce acquisition lead time;
2. ensure the acquisition of products that meet users needs;
3. increase competition for Government contracts;
4. strengthen the commercial industrial base;
5. reduce unnecessary Government investment in inventories and accompanying storage, handling, and distribution costs; and
6. take advantage of commercial quality assurance, warranties, and installation, maintenance, and repair services.

This part goes a long way towards insuring economy and efficiency in the Federal procurement process. It requires agencies to conduct market research and analysis prior to selecting an acquisition strategy for commercial products. It further requires the use of acceptable commercial products and commercial distribution systems (Exhibit 3-5).

2. Coverage that is in the DAR but not the FPR ✓

To improve the uniformity of Federal procurements, the FAR will replace the FPR completely. In doing so the new regulation will satisfy all the requirements previously filled by the FPR. The FAR will expand on the FPR by including the following in its coverage: organizational conflicts of interest (FAR 9.5), multi-year contracting (FAR 17.1), options (FAR 17.2), customs and duty (FAR 25), expert and consulting services (FAR 37), contractor purchasing system reviews (FAR 44), production surveillance and reporting (FAR 42.11), and value engineering (FAR 48).

1. DEFENSE ACQUISITION REGULATION (DAR/ASDR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
				<p>11.006 Market research and analysis.</p> <p>(a) General. Once the Government's needs have been functionally described, market research and analysis shall be conducted to ascertain the availability of commercial products to meet those needs and to identify the market practices of firms engaged in producing, distributing, and supporting such products. This research and analysis should also provide information to aid in selecting an acquisition strategy (see 7.107(h)).</p> <p>(b) Requirements. (1) Agencies shall conduct market research and analysis on a continuing basis for repetitive needs or when future acquisition of similar items is anticipated. For new requirements, agencies shall conduct a special or ad hoc market research and analysis.</p> <p>(2) Market research and analysis shall be conducted unless the responsible agency has designated the applicable indexed product description as one to which the exception in 10.006(b) does not apply. However, market research and analysis may be conducted for the purpose of revising such product descriptions to incorporate state-of-the-art improvements and other necessary changes.</p> <p>(3) The degree of market research and analysis will vary from brief and limited to broad and intensive, depending upon such factors as urgency, estimated dollar value, complexity, and past experience.</p> <p>(c) Responsibilities. Agencies shall assign responsibilities for conducting market research to coordinated teams of management, technical, and contracting personnel. Market research teams shall assure that (1) all inquiries and contacts with industry are made by or coordinated with appropriate contracting officers, (2) certain suppliers are not given unfair advantages, and (3) market research results are documented.</p> <p>(d) Developing information. Market research and analysis involves obtaining the following information, as appropriate:</p> <p>(1) The availability of products suitable to meet the need as is or with minor modification.</p> <p>(2) The terms and conditions including price levels, seasonal price fluctuations, if any, and warranty practices under which commercial sales of such products are made.</p> <p>(3) The requirements of any controlling laws and regulations.</p>

COMMENTARY:

3

EXHIBIT 3-5

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
				<p>(4) The performance characteristics and quality of available commercial products, including quality control and test procedures followed by the manufacturers.</p> <p>(5) Information on the satisfaction of commercial market users having similar needs, such as airlines, public utilities, hospitals, and manufacturers.</p> <p>(6) The costs and problems associated with integration of the product with items currently used.</p> <p>(7) Industry production practices, such as continuous or periodic batch production.</p> <p>(8) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates.</p> <p>(9) The potential cost of modifying commercial products to meet particular needs where required.</p> <p>(10) The current state of the art of the product description being reviewed.</p> <p>(e) Information sources. The information required in paragraph (f) above may be acquired from the following sources, among others:</p> <p>(1) Source data for items of a similar nature maintained at contracting activities.</p> <p>(2) Catalogs published by manufacturers, distributors, and dealers.</p> <p>(3) Mercantile publications, such as <u>Moody's Industrial</u>, <u>Thomas Register of American Manufacturers</u>, <u>Thomas Register Catalog File</u>, and <u>Dunn and Bradstreet</u>.</p> <p>(4) Trade associations and professional societies.</p> <p>(5) Direct mail inquiries to producers or vendors in related fields that sell to the commercial market.</p> <p>(6) Responses to advance notices and solicitation synopses published in <u>Commerce Business Daily</u>.</p> <p>(7) GSA Federal Supply Schedules.</p> <p>(8) Other Federal agencies.</p> <p>(9) Contacts with commercial users likely to have similar needs.</p>

COMMENTARY:

4

EXHIBIT 3-5 (continued)

1. DEFENSE ACQUISITION REGULATION (DAR/ASPP)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code
<p>5. FEDERAL ACQUISITION REGULATION (FAR)</p> <p>11.005 Acceptability.</p> <p>(a) The acceptability of commercial products to meet Government needs should be decided on the basis of quality, reliability, performance, product life, and logistics support requirements.</p> <p>(b) When a defined Government need cannot be met precisely by an available commercial product, consideration shall be given to relaxing the specified need or to acquiring a modified commercial product. When product modifications are considered, a cost/benefit trade-off analysis shall be made. Factors to be considered in this analysis include--</p> <p>(1) An estimate of the cost of modification and impact on supply support capabilities, compared with the estimated costs of a Government-specified item;</p> <p>(2) Delivery schedules for modified commercial products, compared with those required for a Government-specified item; and</p> <p>(3) The impact on competition in current and planned acquisitions.</p> <p>(c) When user needs previously fulfilled by acquisition of products produced under detailed specifications are to be fulfilled by acquisition of commercial or commercial-type products under this part, the contracting officer must consider the impact on previous producers, particularly those that are small or disadvantaged business concerns. Provided that they meet user needs, previously produced and acquired under detailed specifications shall continue to be considered for acquisition for a reasonable limited period in order to give producers time to develop commercial markets. The contracting officer shall determine the period to be allowed on a case-by-case basis after consultation with the previous producers, technical personnel, and the activity's small and disadvantaged business utilization specialists.</p> <p>11.006 Evaluation and award.</p> <p>(a) Adequate market research and analysis will establish either the practicability of making an award on price alone or the need to consider other factors. When other factors are to be considered, the evaluation criteria shall permit consideration of the benefits to be derived by trade-offs, where feasible, among product capability, purchase price, distribution costs, and operation and support costs.</p> <p>(b) Government testing and Government-established and-monitored quality assurance requirements shall be held to a minimum when market research and analysis reveals commercial or commercial-type products that have demonstrated acceptability and reliability in meeting</p>	<p>11.005 Acceptability.</p> <p>(a) The acceptability of commercial products to meet Government needs should be decided on the basis of quality, reliability, performance, product life, and logistics support requirements.</p> <p>(b) When a defined Government need cannot be met precisely by an available commercial product, consideration shall be given to relaxing the specified need or to acquiring a modified commercial product. 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COMMENTARY:

5

EXHIBIT 3-5 (continued)

FAR 42.11 Production Surveillance and Reporting applies to all contracts for supplies and services, including research and development and overhaul and repair contracts but excludes facilities and construction contracts. This part has been simplified and made somewhat briefer and yet provides the necessary policy and procedural guidance for the contracting officer. It emphasizes that the responsibility for proper contract performance rests with the contractor with the Government maintaining the necessary surveillance to protect its interests (Exhibit 3-6).

C. FAR COVERAGE THAT IS MORE EXTENSIVE

Both the DAR and the FPR have coverage on Government property, however, the FPR provides only very limited coverage of the topic. The FAR (FAR 45) coverage is much more inclusive and will satisfy the requirements of all Federal agencies. It prescribes policies and procedures for providing Government property to contractors and contractors use, management, and record keeping related to such property. By examining the table of contents of Part 45 of the FAR, it becomes evident that material from DAR Sections 13, 24, DAR Appendices B and C and FPR 1-8.5 has been greatly consolidated and reorganized as Part 45 of the FAR (Exhibit 3-7).

D. COVERAGE NOT INCLUDED IN THE FAR

The FAR will not prescribe policies or procedures that are unique to a single agency or department. Those specific

procedures and policies will have to be covered in agency acquisition regulations. These agency regulations will not be allowed to repeat or conflict with the FAR. They may include specific delegation of authority and internal organizational and procedural matters necessary to carry out FAR policies and procedures.

Exhibits 3-8 and 3-9, Coverage on Multi-year Contracting and Options respectively, illustrate those portions of the DAR (Column 1) that will not be included in the FAR, (coded OS in column 2) because the material deals strictly with the Department of Defense.

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)

SECTION XXV - PRODUCTION SURVEILLANCE AND REPORTING

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25-002	General policies	25 1
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25-101	Definitions	25 2
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25-203	Delinquency Reports Initiated by Contract Administration Office	25 6
25-204	Special Production Progress Reports	25 6

COMMENTARY:

1. Production surveillance is a function of contract administration. Since the coverage is brief, it does not warrant a separate part; therefore it is included as a subpart of FAR Part 42, Contract Administration.

3. FEDERAL PROCUREMENT REGULATIONS (FPR)

4. Code

1
R

5. FEDERAL ACQUISITION REGULATION (FAR)

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SUBPART 42.11--PRODUCTION SURVEILLANCE AND REPORTING

42.1101	General.
42.1102	Applicability.
42.1103	Policy.
42.1104	Surveillance requirements.
42.1105	Assignment of criticality designator.
42.1106	Reporting requirements.

FARPO, DOD, Draft to OPRP

1

EXHIBIT 3-6

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>SECTION XIII GOVERNMENT PROPERTY</p> <p>TABLE OF CONTENTS</p> <p>Part 1 - General</p> <p>13-000 Scope of Section..... 13.1</p> <p>13-101 Definitions..... 13.2</p> <p>13-101.1 Property..... 13.2</p> <p>13-101.2 Government property..... 13.2</p> <p>13-101.3 Provide..... 13.2</p> <p>13-101.4 Material..... 13.2</p> <p>13-101.5 Special tooling..... 13.2</p> <p>13-101.6 Special test equipment..... 13.2</p> <p>13-101.7 Military property..... 13.3</p> <p>13-101.8 Facilities..... 13.3</p> <p>13-101.9 Government production and research property..... 13.3</p> <p>13-101.10 Nonseverable..... 13.3</p> <p>13-101.11 Facilities contract..... 13.3</p> <p>13-101.12 Facilities project..... 13.3</p> <p>13-101.13 Nonprofit organization..... 13.3</p> <p>13-102 Responsibility and Liability for Government Property..... 13.3</p> <p>13-102.1 Prime Contractors..... 13.3</p> <p>13-102.2 Subcontractors..... 13.4</p> <p>13-103 Furnishing Military Property..... 13.4</p> <p>13-104 Profits and Fees..... 13.4</p> <p>13-105 Use for or by Contractors of Test Facilities Owned and Operated by the Government..... 13.4</p> <p>13-106 Furnishing Motor Vehicles to Government Contractors..... 13.5</p> <p>13-107 Control of Government Property..... 13.5</p> <p>13-108 Correction of Defective System for Control of Government Property..... 13.5</p>	WFE			<p>PART 45--GOVERNMENT PROPERTY</p> <p>TABLE OF CONTENTS</p> <p>Scope of part..... 45.100</p> <p>SUBPART 45.1--GENERAL</p> <p>Definitions..... 45.101</p> <p>Policy..... 45.102</p> <p>Responsibility and liability for Government property..... 45.103</p> <p>Review and correction of contractors' property control systems..... 45.104</p> <p>Records of Government property..... 45.105</p> <p>Government property clauses..... 45.106</p> <p>Fixed-price type contracts..... 45.106-1</p> <p>Cost-reimbursement type, time and material, and labor hour contracts..... 45.106-2</p> <p>Laundry and dry cleaning and demolition contracts..... 45.106-3</p>

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1

FARPO, DOD, Draft to OPR

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>Part 2—Material (See Page 4)</p> <p>Part 3—Providing Government Property to Contractors (See Page 4)</p> <p>Part 4—Use and Rental of Government Property (See Page 5)</p>				
COMMENTARY:				2

EXHIBIT 3-7 (continued)

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
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COMMENTARY:				3

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
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COMMENTARY:

5

EXHIBIT 3-7 (continued)

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
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COMMENTARY:

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EXHIBIT 3-7 (continued)

1. <u>DEFENSE ACQUISITION REGULATION (DAR/ASPR)</u>	2. <u>Code</u>	3. <u>FEDERAL PROCUREMENT REGULATIONS (FPR)</u>	4. <u>Code</u>	5. <u>FEDERAL ACQUISITION REGULATION (FAR)</u>
<p>SECTION XXIV — PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS</p> <p>TABLE OF CONTENTS</p> <p><i>(See pages 10 through 12)</i></p>				
<p><u>COMMENTARY:</u></p>				<p>7</p>

EXHIBIT 3-7 (continued)

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)

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COMMENTARY:

2. Code

DAR APPENDIX C

APPENDIX C - GOVERNMENT PROPERTY - NON-FAR CONTRACTORS

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C-102.18 Military Property	C 1
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C-202 Relief From Responsibility	C 2
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5. FEDERAL ACQUISITION REGULATION (FAR)

SUBPART 45.5--MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS

45.500 Scope of subpart.
45.501 Definitions.

See 45.507, page 9.
See 45.511, page 9.
See 45.511, page 9 and 45.509, page 50

45.502 Contractor responsibility.
45.502-1 Receipts for Government Property.
45.502-2 Discrepancies incident to shipment.
45.503 Relief from responsibility.
45.504 Contractor's liability.

EXHIBIT 3-7 (continued)

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)		2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
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COMMENTARY:

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EXHIBIT 3-7 (continued)

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)		2. Code	FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
Part 2—Methods of Disposal	24-201 Disposal—General	SS	Subpart 1-45—Disposition of Personal Property Inventory		45-602 Policy.
	24-201.1 Priorities		1-4501 General	R	45-603 Disposal methods.
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	24-202 Contractor-Acquired Property—Purchase or Retention at Cost, or Return to Suppliers		1-4502 Contractor-acquired property	AP	45-605 Contractor-acquired property.
	24-202.1 Purchase or Retention at Cost		1-4502-1 Purchase of retention at cost.	AP	45-605-1 Purchase or retention at cost.
	24-202.2 Return of Property to Suppliers		1-4502-2 Return of property to suppliers.		45-605-2 Return to suppliers.
	24-202.3 Cost Reimbursement Type Contracts		1-4502-3 Cost reimbursement type contracts.		45-605-3 Cost-reimbursement type contracts.
	24-203 Inventory Schedules	AV	1-4503 Inventory schedules		45-606 Inventory schedules.
	24-203.1 Submission of Inventory Schedules		1-4503-1 Submission of inventory schedules.		45-606-1 Submission.
	24-203.2 Separate Schedules		1-4503-2 Separate schedules.		45-606-2 Common items.
24-204 Scrap	24-204.1 General	SS	1-4504 Scrap and salvage		45-607 Scrap.
	24-204.2 Pre-Inventory Scrap Determinations		1-4504-1 General		45-607-1 General.
	24-204.3 Segregation		1-4504-2 Scrap warranty.		45-607-2 Recovery of precious metals.
	24-204.4 Contractor's Approved Scrap Procedure				
	24-204.5 Scrap Warranty				
	24-205 Screening of Contractor Inventory	D	1-4505 Screening of property		45-608 Screening of contractor inventory.
	24-205.1 General				45-608-1 General.
	24-205.2 Procedure				45-608-2 Standard screening.
	24-205.3 Procedure for Industrial Plant Equipment	NRE	1-4506 Government-furnished property		45-608-3 Agency screening.
	24-205.4 Special Screening Procedures				45-608-4 Limited screening.
24-206 Sale of Surplus Contractor Inventory	24-206.1 General	SS	1-4507 Sale or other disposition of surplus	R	45-609 Donations.
	24-206.2 Competitive Sales		1-4507-1 General	NM	45-610 Sale of surplus contractor inventory.
	24-206.3 Negotiated Sales		1-4507-2 (Reserved)	NM	45-610-1 Responsibility.
	24-206.4 Proceeds of Sale		1-4507-3 Proceeds of sale	NM	45-610-2 Exceptions from sale by GSA.
	24-206.5 Applicability of Antitrust Laws		1-4507-4 Application of antitrust laws	NM	45-610-3 Proceeds of sale.
	24-206.6 Foreign Contractor Inventory		1-4507-5 Foreign contractor inventory	R	45-610-4 Contractor inventory in foreign countries.
24-207 Donations		V	1-4508 Donations.		

COMMENTARY:

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
24-206 Destruction or Abandonment..... 24.31	V	1-8106 Destruction or abandonment.	BA	45.611 Destruction or abandonment.
24-209 Removal and Storage..... 24.31	NAE	1-8108 Special machinery, tooling, and equipment.	BA	45.612 Removal and storage.
24-209.1 General..... 24.31		1-8111 General and storage, the expense and risk of the contractor.	BA	45.612-1 General.
24-209.2 Special Storage at the Risk of the Contractor. 24.31		1-8111-1 Special storage at the expense and risk of the Government.	BA	45.612-2 Special storage at the contractor's risk.
24-209.3 Special Storage at the Expense and Risk of the Government..... 24.31			BA	45.612-3 Special storage at the Government's expense.
24-210 Property Disposal Determinations..... 24.32	SS	1-8113 Notice of property disposal.	R	45.613 Property disposal determinations.
24-211 Reserved..... 24.33				
24-212 Subcontractor Inventory..... 24.33	SS	1-8116 Subcontractor termination inventory.	R	45.614 Subcontractor inventory.
24-212.1 General Policy..... 24.33		1-8116-1 General policy.		
24-212.2 Inventory Schedules..... 24.33		1-8116-2 Inventory schedule.		
24-212.3 Scrap..... 24.33		1-8116-3 Scrap and salvage.		
		1-8116-4 Serviceable or usable property.		
	NAE	1-8116 Adjustment prior to final settlement.	NR	(See 45.606, page 105; 45.606-3, page 107)
24-213 Accounting for Contractor Inventory..... 24.34	SS	1-8116-1 Duty of contractors to inform the Government.	R	45.615 Accounting for contractor inventory.
		1-8116-2 Multiple Government to retire inventory schedule.		
		1-8116-3 Accounting for termination inventory.		

COMMENTARY:

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EXHIBIT 3-7 (continued)

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>Part 3—Forms, Instructions, and Reports</p> <p>24-301 Forms..... 24.35</p> <p>24-301.1 Standard Form 97, Certificate of Release of a Motor Vehicle..... 24.35</p> <p>24-301.2 Standard Form 120, Reporting of Excess Personal Property..... 24.35</p> <p>24-301.3 Standard Form 125, Report of Strategic and Critical Materials..... 24.35</p> <p>24-301.4 DD Form 1131, Cash Collection Voucher..... 24.35</p> <p>24-301.5 DD Form 1149, Requisition and Invoice Shipping Document..... 24.35</p> <p>24-301.6 DD Form 1342, DoD Property Record..... 24.35</p> <p>24-301.7 DD Form 1483, Shipping Document for GFM Turn-in..... 24.35</p> <p>24-301.8 DD Form 1640, Request for Plant Clearance..... 24.35</p> <p>24-301.9 DD Form 1636, Inventory Disposal Report..... 24.35</p> <p>24-301.10 DD Form 1638, Report of Excess and Surplus Contractor Inventory..... 24.35</p> <p>24-301.11 DD Form 1641, Disposal Determination/Approval..... 24.35</p> <p>24-301.12 DD Form 1639, Scrap Warranty..... 24.35</p> <p>24-301.13 DD Form 1642, Inventory Verification Survey..... 24.35</p> <p>24-301.14 DD ASPR Form 1115, Instructions in Preparing Inventory Schedules of Contractor Inventory..... 24.36</p> <p>24-301.15 DD Form 1635, Plant Clearance Case Register..... 24.36</p> <p>24-301.16 DD Form 1637, Notice of Acceptance of Inventory..... 24.36</p> <p>24-301.17 DD Form 1348-1, DoD Single Line Item Release/Receipt Document..... 24.36</p> <p>24-302 Instructions..... 24.36</p> <p>24-302.1 Instructions for Performing Inventory Verification and Determination of Allocability..... 24.36</p> <p>24-302.2 DD Form 1636, Inventory Disposal Report..... 24.38</p> <p>24-302.3 DD Form 1638, Report of Excess and Surplus Contractor Inventory..... 24.39</p> <p>24-302.4 Instructions for Establishing a Plant Clearance Case..... 24.40</p> <p>24-302.5 Instructions for Assigning Plant Clearance Case Number..... 24.41</p> <p>24-302.6 Instructions for Preparing Standard Form 120, Report of Excess Personal Property..... 24.41</p> <p>24-302.7 Form Letter for Transmitting DD Form 1342 to DPEEC..... 24.43</p> <p>24-302.8 General Sales Terms and Conditions and Special Conditions of Sale..... 24.43</p>	WFE			

NOTE
FORMS TO BE INCLUDED IN THE
FAR WILL BE ILLUSTRATED
IN PART 53.

COMMENTARY:

1-322.70) 1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>iii) If the solicitation restricted the submission of prices to the multi-year basis only, the solicitation shall be canceled and a new solicitation issued by whatever procedures are then appropriate, except that if the multi-year price offers distinct advantages to the Government, a multi-year award may be made with the advance approval of the Chief of the Purchasing Office;</p> <p>(3) In no event shall award be made at an unreasonable price (see 2-404.1 and 3-401).</p> <p>(m) <i>Clause</i>. The clauses in 7-1903.33(e) and (b) shall be included in all contracts for the procurement of services under the multi-year procurement method, except as provided in 1-322.8 and 1-322.9.</p> <p>1-322.8 <i>Multi-Year Procurement of Services Under Public Law 90-378</i>. (a) Under Public Law 90-378 (10 USC 2306(g)), the Department of Defense is authorized to enter into multi-year procurements for the following listed services to be performed outside the 48 contiguous states and the District of Columbia to procure requirements which are out in excess of the Five-Year Defense Program and for which funds are limited by statute for obligation during the fiscal year in which the contract is executed:</p> <ul style="list-style-type: none"> (i) operation, maintenance, and support of facilities and installations, (ii) maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment, (iii) Specialized training necessitating high quality instructor skills (for example, pilot and other aircrew members, foreign language training), and (iv) base services (for example, ground maintenance, in-plane refueling, bus transportation, refuse collection and disposal). <p>However, such procurements shall be entered into for no more than a five-year period and only when such procurements are consistent with the policies and satisfy the requirements set forth in 1-322.6 and 1-322.7 (except as provided in (b) and (c) below). The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October—30 September).</p> <p>(b) Since procurements under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 1-322.6 and 1-322.7 shall be considered to mean "fiscal year."</p> <p>(c) <i>Clause</i>. The clauses to 7-1903.33(c) and (d) shall be included in all service contracts for the procurement of services under this paragraph 1-322.8, on a multi-year basis.</p> <p>1-322.9 <i>Multi-Year Procurement of Supplies and Services Under Public Law 91-142</i>. (a) <i>General</i>. Under Section 512 of Public Law 91-142, the Department of Defense is authorized to enter into contracts for periods of not more than four years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such procurements shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in 1-322.2 for supply contracts and 1-322.6 and 1-322.7 for service contracts (except as provided in (b) and (c) below). The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October — 30 September).</p> <p>(b) <i>Limitations</i>. Since procurements under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 1-322.6 and 1-322.7 shall be considered to mean "fiscal year."</p> <p>(c) <i>Clause</i>. The clauses in 7-1903.33(c) and (d) shall be included in all contracts for the procurement of supplies or services under this paragraph 1-322.9 on a multi-year basis.</p>	<p>MR 01</p> <p>NFE 03 02</p> <p>NFE 05 02</p>			

COMMENTARY:

- (1) See 17.102-5.
- (2) Material implements legislation applicable only to DOD.

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)

3. FEDERAL PROCUREMENT REGULATIONS (FPR)

4. Code

2. Code

5. FEDERAL ACQUISITION REGULATION (FAR)

1-1505 Exercise of Options

- (a) The exercise of an option by the Government requires the contracting officer's written notification in the contract within the time period specified in the contract.
- (b) When the contract provides for economic price adjustment and the contractor requests revision of price pursuant to such provision, or the provision applies only to the option quantity, the effect of economic price adjustment on prices under the option must be ascertained before the option is exercised.
- (c) Options should be exercised only if it is determined that
- (i) funds are available,
 - (ii) the requirement covered by the option fulfills an existing need of the Government. A Foreign Military Sales (FMS) commitment undertaken by the United States Government on behalf of a foreign country constitutes such need. However, in the latter case, the contract shall expressly provide for the Government's right to exercise the option for FMS purposes (see 1-1503(e) and 6-1309), and
 - (iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price, and factors in (e) and (f) below considered.
- (d) Insofar as price is concerned, the determination under (c)(iii) above shall be made on the basis of one of the following
- (1) A new solicitation fails to produce a better price than that offered by the option. If the contracting officer anticipates that the option price will be the best price available, he should not use this method of testing the market but should use one of the methods in (2), (3), or (4) below

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17.207 Exercise of options.

- (a) In the exercise of option provisions, contracting officers shall provide the written notice to the contractor within the time period specified in the contract.
- (b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.
- (c) Contracting officers may exercise options only after determining that--
 - (1) Funds are available;
 - (2) The requirement covered by the option fulfills an existing Government need; and
 - (3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and factors in (d) and (e) of this section considered.
- (d) Contracting officers, after considering price and factors other than price, shall make their determination on the basis of one of the following:
 - (1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.

COMMENTARY:

EXHIBIT 3-9

IV. CONCLUSIONS

A. PREFACE

This chapter answers the questions that were posed in the introduction of this thesis and provides conclusions that have been drawn from the material presented in this paper. Additionally, the impact on the acquisition manager is evaluated with each question.

B. RESEARCH QUESTION 1

HOW DID THE FAR COME ABOUT? HOW IS IT BEING DRAFTED? AND HOW IS IT APT TO AFFECT FUTURE ACQUISITION MANAGERS?

1. Answer

The FAR got its initial start from the recommendation of the Commission on Government Procurement (A-10) which was:
[1:38]

"Establish a system of Government-wide coordinated and to the extent feasible, uniform procurement regulations under the direction of the Office of Federal Procurement Policy, which will have overall responsibility for development, coordination, and control of procurement regulations.

The FAR is being drafted by two project offices, one at GSA (FPR staff) and the other at DOD (FARPO). It is written by drafting teams/panels consisting of highly skilled and experienced procurement personnel. It is reviewed by an expert policy, legal, and editorial staff and then further analyzed by experienced and competent project managers for any other possible improvements.

2. Potential impact on the acquisition manager

The FAR coverage on Government property as previously presented in Chapter III is a representative example of FAR coverage that will make the job of those dealing with Government property significantly easier. The substantial reorganization and consolidation of this coverage, from four sections of the DAR and one FPR section into one FAR part is a noteworthy accomplishment in itself. The consolidation without dilution of content is significant [25].

3. Conclusion

Minor impact on acquisition managers, both government and civilian contractors is expected.

C. RESEARCH QUESTION 2

WHAT ARE SOME OF THE HANDICAPS ENCOUNTERED IN THE DRAFTING OF THE FAR?

1. Answer

Some of the handicaps under which the FAR is being drafted include:

a. The existence of two separate major procurement statutes that had to be complied with [24,25];

b. The initial scope of the project was grossly underestimated [21,22];

c. The establishment of an overly optimistic time schedule which may have induced drafters to do less than the required research for FAR coverage [22]; and

d. The Project Officers did not get to select their initial staff, instead personnel were detailed to the project office who, after a short time on the job, became disillusioned with their assigned portion of the FAR coverage and chose to transfer from the project office [23].

2. Impact on the acquisition manager

In spite of the above handicaps encountered during the drafting of the FAR, the project managers have been able to work around and with the handicaps. However, the continuous slippage of the forecasted completion schedule has provided critics of the FAR with ammunition against the lack of progress achieved thus far. Instead of having the new regulation to work with in 1980 the acquisition managers can expect a quality product in 1981.

3. Conclusion

No anticipated impact on acquisition managers, however when the document is finally released acquisition managers will question with broad implication the document in light of the length of its gestation period.

D. RESEARCH QUESTION 3

WHAT WILL AND WILL NOT BE INCLUDED IN THE FAR AND WHAT WILL THE AGENCY IMPLEMENTING AND SUPPLEMENTING REGULATIONS BE?

1. Answer

The FAR will provide coverage of material that is applicable to all Federal agencies. However, it will not

include coverage that is unique to one agency. All single agency unique material is intended to be in agency regulations [25].

Additionally, the FAR will reduce the size of the current procurement regulations from approximately 5000 pages (based on estimates of 3000 pages of DAR, 1000 pages of FPR and 1000 pages of NASA PR) to 2500 pages (based on estimates of 1000 pages for the FAR, 1000 for the DAR and 500 for the NASA PR).

2. Impact on the acquisition manager

The acquisition manager in the Federal Government whether on the DOD side or the Federal agencies side will now be able to work with and be guided by a single, uniform regulation that is applicable to all Federal Agencies. This may provide greater mobility for procurement personnel between the various agencies and DOD and at the same time provide more continuity in procedures and policies between jobs in the two sectors. Also the sheer size reduction as well as the reduction in the number of regulations should make the procurement job that much more manageable.

3. Conclusion

Minor adverse impact on acquisition manager and potentially can be a force for an improved working environment.

E. RESEARCH QUESTION 4

IS THE FAR MAKING ACQUISITION POLICY?

1. Answer

The FAR will make acquisition policy in some cases through resolution of differences between the DAR and FPR coverage through simplification and through the addition of new material [25].

The FAR represents an extensive effort, part of this effort consisted of zero basing both the FAR text coverage and the clauses that pertain to the coverage. There is some risk involved in rewriting clauses since they are subject to much interpretation during litigation and also since a large library of precedents has been established. However, to simplify the regulation without simplifying the associated clauses would represent only an incomplete effort. The current FAR (Part 52) will have clauses that are much easier to interpret and follow and still retain their original intent. For those instances where reference to previous versions of the clauses is required the FAR will provide the necessary derivation history with each clause. Each clause will be annotated as to its derivation (whether DAR, FPR or New) and the extent of rewriting that was done (whether completely rewritten, almost verbatim or verbatim).

2. Impact on the acquisition manager

Even though the FAR may make acquisition policy in some cases, those policies will have been in existence in

various documents, policy letters or circulars. The FAR will serve to bring these together, put them in focus and, where differences existed previously, it will resolve these and present one policy that will apply across the Federal establishment. Furthermore, the FAR will make the application and use of clauses much easier for acquisition managers.

3. Conclusion

Major impact on acquisition manager will occur.

F. RESEARCH QUESTION 5

HOW SUCCESSFUL IS THE FAR IN COMPLYING WITH THE RECOMMENDATIONS OF THE COMMISSION ON GOVERNMENT PROCUREMENT AND WILL IT HALT THE PROLIFERATION OF AGENCY ACQUISITION REGULATIONS?

1. Answer

The FAR has satisfied approximately twenty of the COGP recommendations. [2:99] The FAR's success in halting future regulation proliferation will depend largely on how rigorously the FAR Council monitors and enforces agency regulations. The prohibition requirement against repeating, paraphrasing or conflicting with the FAR, coupled with the requirement that agency regulations be reviewed and approved at a level above the agency, should serve as strong deterrents of agency regulations. The requirement to have agency regulations published in the Code of Federal Regulations as well as have them subject to public comment will also aid in keeping their numbers down.

The way the FAR is being drafted provides for public comment only after the coverage has been thoroughly researched, reviewed and agreed to by OFPP. Once the drafted material is published in the Federal Register it is anticipated that only minor revisions will be required as a result of public comments. Granted the public comments are towards the end of the drafting process and only after a version of the draft has been approved. Thus perhaps it would lead some to be concerned about whether their comments are too late and whether they should not have been involved in earlier stages of the drafting process. The author believes involvement of the public in the drafting process any earlier than presently scheduled would only hinder the project's effort and add to further delays. Making comments on rough draft material that is subject to major revision prior to its final version would not be a very effective way to write a regulation that has to satisfy numerous statutes, public laws and OFPP policy guidelines. It seems much more prudent to review material that complies with all statutes and guidelines and has been well written. Comments are apt to be fewer and hopefully more substantive. All comments will be thoroughly reviewed and those deemed appropriate will be incorporated in the final FAR draft. The project manager's desire for a high quality product will more than welcome and incorporate any comments that will improve the FAR.

2. Impact on the acquisition manager

Although the FAR system will make it more difficult to issue agency acquisition regulations in the future, it still allows the issuance of agency regulations if they meet the established criteria. The process of public review and the publication of all agency regulations in Title 48 of the Code of Federal Regulations will facilitate the effort to halt the proliferation of acquisition regulations.

3. Conclusion

Minor impact on acquisition manager, however, the public review process may make non-government acquisition managers perceive a greater input to their destiny and yield very positive results.

G. SUMMARY

From the above conclusions it becomes evident that the impact on the acquisition manager in the way he conducts business will be minor to moderate at most. The FAR will not radically change the way procurement is being done, it will merely provide those involved with a better regulation with which to do their job. Those acquisition managers that are familiar with the current acquisition regulations will have no problems in transitioning to the FAR, since the basic procedures and policies have not been changed, only improved and made more comprehensible. With adequate forewarning prior to the implementation of the FAR a smooth conversion

period with minimal disruption to ongoing work can be expected.

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